

# Administrative Law Research United States (Federal)

Case Western Reserve University  
School of Law  
The Judge Ben C. Green Law Library  
Spring 2006

# Three Branches of Government

- Legislature
- Judiciary
- Executive
  - President
  - Cabinet
  - Administrative Agencies
- Independent Administrative Agencies
  - often regulatory

# Why Administrative Law Matters

- Do you want Senator Kennedy writing regulations delineating the maintenance of nuclear reactors?
- Do you want Senator Frist writing securities regulations?
- Boring, dry, and technical material may actually mean the difference between life and death. (OSHA; mining safety)

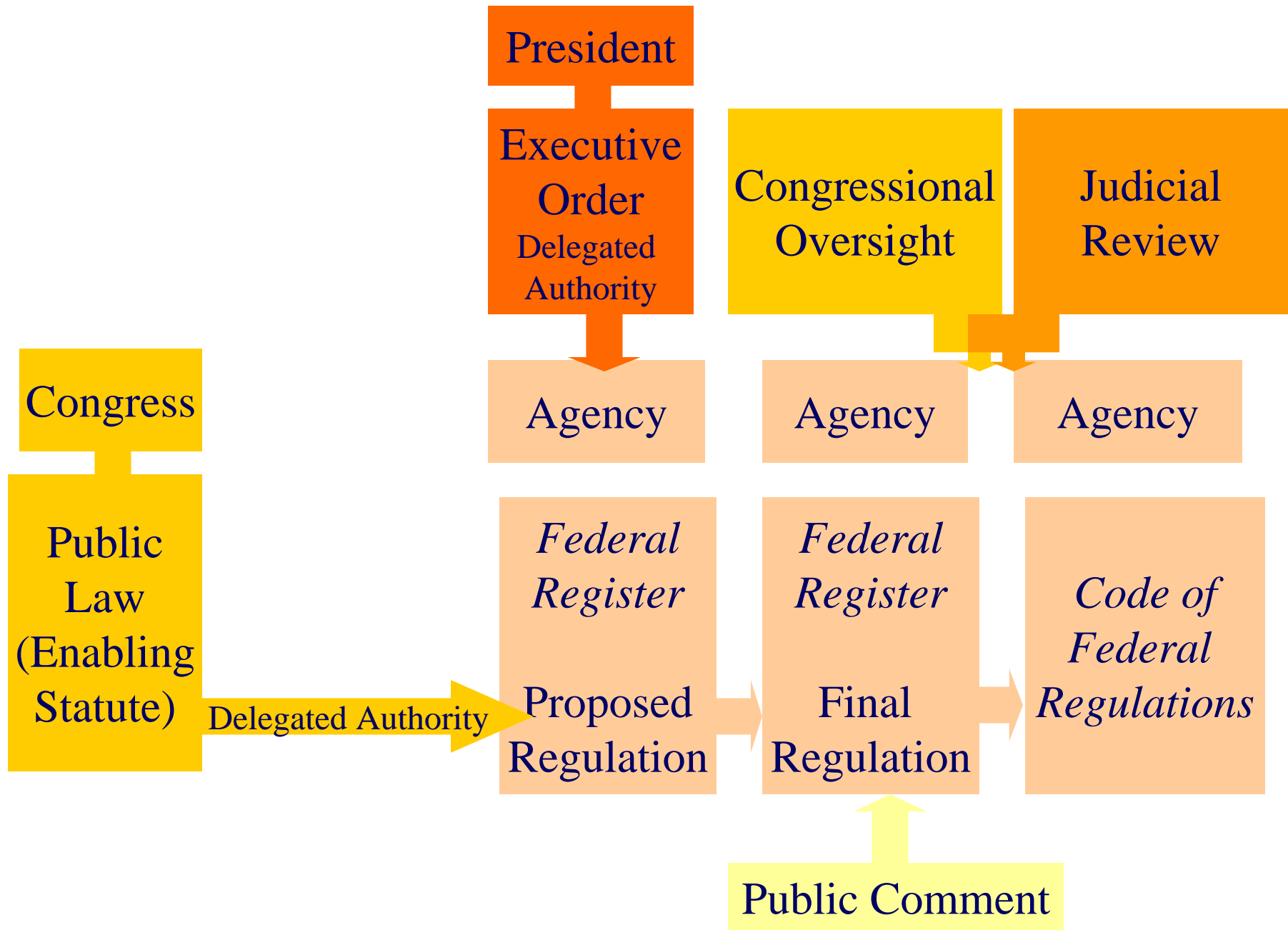
# Administrative Law Matters II

- Federal Register averaged over 76,000 pages annually from 1998-2004.
- EPA takes into account monetary and human costs attributed to various levels of pollution when setting regulations.
- Regulations can mandate substantial civil and even criminal penalties for infractions.
- Best time to lobby for clients' interests is during the public comment period.
- Citizen-initiated suits may be allowed, in certain circumstances.

# Administrative Law Matters III

## NARA Promo Info

- **Who uses the *Federal Register*?**
- Reading the *Federal Register* may be vital to you and your customers:
- If you need to know about the day-to-day operations of the Federal Government
- If your business is regulated by a Federal agency
- If you are an attorney practicing before a regulatory agency
- If your organization attends public hearings or meetings or applies for grants
- If you are concerned with Government actions that affect the environment, health care, financial services, exports, education, or other major public policy issues



# Agency Actions

- Rules/Regulations
- Licenses, permits, etc.
- Advisory Opinions
- Orders
- Decisions

# Administrative Regulations (Rules)

As allowed by its enabling statute and/or as instructed by other federal legislation (and subject to judicial review):

- An agency proposes regulations (rules) via publication of (advance notice of) proposed regulations in the Federal Register, eliciting public comment (a.k.a., lobbying).
- After addressing substantive public comments (often submitted online now), an agency may promulgate final regulations in the Federal Register. Final regulations have the force of law. Not all proposed regulations become final.
- Final regulations are then codified in the Code of Federal Regulations (C.F.R.). Though “unannotated”, the C.F.R. does provide the Federal Register citation where the final regulation was first published. This citation can be used, in turn, to trace back the history of the regulation in the Federal Register.

# Comparison of Statutes and Regulations (Westlaw)

## STATUTES

- Passed by Congress
- Provide for broad social and economic goals and legal requirements
- Get their power from the Constitution
- Reviewed by courts for constitutionality
- Representative democracy- Congress acts to represent the will of the people

## REGULATIONS

- Issued by agencies
- Get their power from Congress
- Prescribe specific legal requirements to meet congressional goals
- Reviewed by courts to determine constitutionality, limits of delegated authority, and whether they are arbitrary and capricious
- Participatory democracy – agencies must seek and consider public comment

# Legislation

- Enabling Statute of specific agency
  - “The Federal Mine Safety and Health Review Commission in an **independent, adjudicative** agency established by the Federal Mine Safety and Health Act of 1977 (30 USC 801 *et seq.*) that provides administrative trial and appellate review of legal disputes arising from enforcement actions taken by the Department of Labor.”
  - U.S. Government Manual, p. 418 (2004-05)

# Authority of Agency

- Congress delegates any or all of the following to an agency via enabling legislation:
  - rulemaking authority (or by Executive Order)
  - judicial authority over disputes arising from regulation or enabling legislation
  - executive power to investigate and prosecute violators of regulations
- SEC ([www.sec.gov](http://www.sec.gov)): has all three powers.

# Administrative Procedure Act (APA)

- Rulemaking requires
  - official notice
  - public comment
  - final notice of rules
  - judicial review
    - 5 U.S.C. §§551-559 and 701-706

# APA

- Requires the Federal Register to contain:
  - Substantive rules & interpretations
  - Statements of general policy
  - Rules of practice and procedure
  - Descriptions of agency forms
  - Rules of Organization
  - Descriptions of agency's central and field orgs.
  - Amendments or Revisions to the above
  - Most proposed rules/regulations (some exceptions)

# APA/FOIA

- Exceptions
  - National security
  - Agency's internal management info
  - Agency option, with good cause

# Federal Register Act

- Agency self-publishing in the 1930s caused confusion & lack of transparency
- Federal Register Act (1935)
  - NARA/GPO to publish daily Federal Register
  - promulgate rules and Presidential documents
- CFR (1938-)
  - 50 titles by subject
  - updated annually (in four “parts”) since 1972
  - Title 3 contains Presidential proclamations and Executive Orders

# Federal Register

- 1947-1972: Preambles to proposed rules provide [some] explanation for the rules.
- 1973+: Final rules required to summarize general subject matter of rule in the preamble
- 1977+: Comments to proposed rules must be summarized and addressed

# Federal Register Components

- Table of Contents
- CFR Parts Affected Section
- Presidential documents
- Agency rules (final and proposed), notices
- Sunshine Act notices
- Unified Agenda of Federal Regulations
- Reader Aids

# Free Online F.R. & C.F.R.

- Federal Register (1994-current)
  - <http://www.gpoaccess.gov/fr/index.html>
  - FR TOC available (via e-mail)
- Code of Federal Regulations (current and archival back to 1996)
  - <http://www.gpoaccess.gov/cfr/index.html>

# F.R. & C.F.R. (Print)

- Federal Register: Monthly index, cumulated annually (Private index has a time lag.)
- C.F.R.: C.F.R. Index and Finding Aids (revised annually as of Jan. 1)
  - subject/agency index for codified rules
  - list of agency-prepared indexes appearing in individual C.F.R. volumes
  - table of laws and Presidential documents cited as authority for currently codified regulations
  - list of C.F.R. titles, chapters, subchapters, and parts
  - alphabetical list of agencies appearing in the C.F.R.

# Fee-Based Online Services

- Federal Register (1980-current)
  - Lexis or Westlaw: cost vs. enhanced searches
  - FR TOC available
  - Hein Online: complete set (with annual indexes) available (full-text; poor search interface)
- Code of Federal Regulations (current)
  - Lexis or Westlaw
- C.F.R. (archival coverage varies online)

# Lexis Searching: Fed. Reg.

Segments can be searched in preamble:

- Agency (name of issuing agency)
- Action (notice, proposed/final rule)
- Summary
- Date
- Address
- Contact

# Lexis Searching: C.F.R.

- Search by segment:
  - Authority
  - Chapter
  - Cite
  - Classification
  - Heading
  - History
  - Note
  - Part
  - Section
  - Text
  - Title
- Book Browse

# Westlaw Searching: Fed. Reg.

- Search by field:
  - PR (PRELIM): agency; document type; CFR affected
  - CA (CAPTION): subject matter of document
  - SU (SUMMARY): document summary; if available
  - IM (IMAGE): image, if available, for printing

# Westlaw Searching: C.F.R.

- Search by field:
  - PR (PRELIM): CFR title and other headings that precede caption
  - CA (CAPTION): CFR section number and heading
  - NO (NOTES): editorial & effective date notes
  - CR (CREDIT): USCA authority and F.R. source notes

# Lexis and Westlaw Tips

- Use field/segment searches to obtain more targeted results.
- If you cannot use Shepard's or KeyCite to update a certain administrative document, try to use files in Lexis or Westlaw as citators
- Don't forget U.S.C.A. or U.S.C.S. when researching enabling statutes.
- F.R. and C.F.R. will let you track back the history of the regulation, but for context you will need secondary sources. (Because there is no annotated F.R. or annotated C.F.R. )

# C.F.R. Tips

- There is no annotated C.F.R.
- Before computers, looseleaf sets (e.g. Federal Securities Law Reporter & Federal Standard Tax Reporter) provided “mini-libraries” – one stop shopping for (enabling) statute; regulations’ and (major administrative decisions)
- Current awareness tools, such as BNA

# C.F.R. Tips

- Even in print, the C.F.R. is relatively current.
- Updating in print is a tedious, though fairly mechanical, process involving the Federal Register and the List of Sections Affected (LSA)

# e-C.F.R.

- GPO experiment (in beta test) to seamlessly integrate C.F.R. and Federal Register
  - e.g. [www.dol.gov](http://www.dol.gov)
- Lexis or Westlaw will indicate a “current as of ...” date. You may have run another FR search
- Regulatory practitioner may scan FR-TOC
- Agency website or personnel

# Updating C.F.R.: List of Sections Affected (LSA)

- The List of CFR Sections Affected lists proposed, new, and amended Federal regulations that have been published in the Federal Register since the most recent revision date of a CFR title.
- Each LSA issue is cumulative and contains the CFR part and section numbers, a description of its status (e.g., amended, confirmed, revised), and the Federal Register page number where the change(s) may be found.

# LSA (Internet only)

- <http://www.gpoaccess.gov/lsa/index.html>
  - [List of CFR Parts Affected Today](#)
  - [Current List of CFR Parts Affected](#)
  - [Last Month's List of CFR Parts Affected](#)

# Updating C.F.R. (Print)

- LSA (monthly, “cumulative”)
- Check corresponding annual LSA
  - Titles 1-17: December issue
  - Titles 17-27: March issue
  - Titles 28-41: June issue
  - Titles 42-50: Sept. issue
- Then check “Cumulative List of Parts Affected” in Reader Aids of latest Federal Register

# Administrative Decisions

- Pre-Internet
  - Agency may have published all/some of its own decisions.
  - Private publishers (BNA/CCH) may have published all/some of an agency's decisions (often in looseleaf services).
  - Interested parties may have had to request decisions from agency.
- Lexis and Westlaw are potential sources
- Agency websites are good for current opinions.
  - For older opinions, you may have to consult print/looseleaf service.
  - Exception: NLRB has extensive backfile of opinions
  - <http://www.nlr.gov/nlr/legal/decisions/default.asp>

# Lexis

- Labor and Employment
  - NLBR Decisions (Note: Many on Internet)
  - EEOC Decisions
  - OSHA Review Commission Decisions
  - ERISA Letter opinions
- Securities
  - SEC No-Actions Letters and Releases
  - Commodities Futures Trading Orders and Decisions

# Lexis (cont'd.)

- Tax
  - Private Letter Rulings
  - General Counsel Memoranda
  - Actions on Decisions
- Justice: Opinions of the Attorney General
- Environmental
  - EPA Consent Decrees
  - CAA decisions
  - Dept. Interior ALJ Decisions

# Lexis (cont'd.)

- Banking
  - Office of Thrift Supervision General Counsel Opinions
  - Federal Home Loan Bank Board general Counsel Opinions
  - FDIC Interpretive Letters & Enforcement Decisions
  - Comptroller General Decisions

# Westlaw

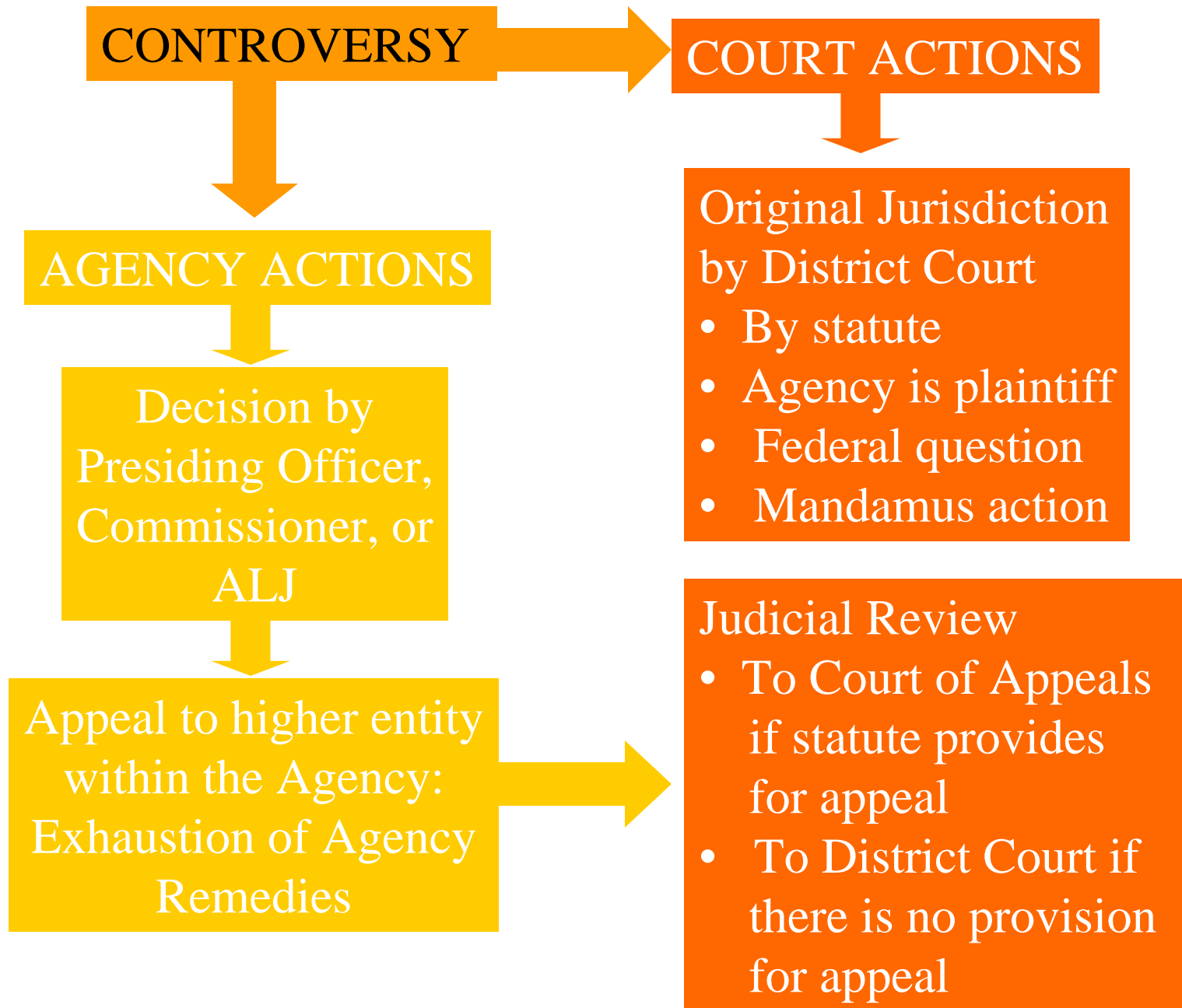
(Decisions are “KeyCitable”)

- Board of Immigration Appeals
- EEOC
- EPA
- FCC (Commerce & Communications)
- FERC
- Fed Government Contracts Board
- SEC (federal)
- IRS (Rulings and Memos)

# Westlaw (cont'd.)

- NLRB
- Officer of the Comptroller General
- Patent Office
- Public Utility Reports
- Tax Courts

# Judicial Review



# Federal Agency Info

- U.S. Government Manual (print/online)
  - <http://www.gpoaccess.gov/gmanual/>
- Federal Regulatory Directory (print)
- Agency websites
  - <http://www.fedworld.gov>
  - <http://www.firstgov.gov>
  - GAO
- Federal Yellow Books

# Sample Agency Websites

- <http://www.epa.gov>
- <http://www.dol.gov>
- <http://www.hhs.gov>
- <http://www.gao.gov/>
- <http://www.sec.gov>
- <http://www.msha.gov/>
- <http://www.ed.gov/>

# State Administrative Law

- [http://www.nass.org/UnitedStates\\_file/United\\_States.htm](http://www.nass.org/UnitedStates_file/United_States.htm)
- **Lexis:**
  - **Legal – State Legal-U.S. – Combined States – Administrative Materials & Regulations**
- **Westlaw: All Databases—U.S. State Materials—Administrative & Executive Materials**

# Sources

- All charts are from Westlaw. Some content derived from Westlaw and Lexis promotional materials.
- Richard J. McKinney, A Research Guide to the Federal Regulations and the Code of Federal Regulations
  - <http://www.llsdc.org/sourcebook/fed-reg-cfr.htm>
- Finding the Law, 12<sup>th</sup> ed.